

REMARKS

Claims 1 and 3 stand rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent Number 6,674,295 to Farrow (hereinafter “Farrow”). Claims 1 and 3 also stand rejected under 35 U.S.C. § 102(b) as being anticipated by United States Patent Application 2001/0056503 by Hibbard (hereinafter “Hibbard”). Claims 4-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hibbard in view of United States Patent Application 2006/0092926 by Tang (hereinafter “Tang”). Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hibbard in view of United States Patent Application Number 6,157,944 to Pedersen (hereinafter “Pedersen”). Claims 8, 9, 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hibbard in view of United States Patent Application Number 6,742,14 to Miller (hereinafter “Miller”). Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hibbard and Miller in view of Farrow.

Claims 1-11 are provisionally rejected for nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application Number 10/733,055. Applicants have included herewith a terminal disclaimer in response to the obvious-type double patenting rejection of claims 1-11.

For the Examiner’s convenience and reference, Applicants’ remarks are presented in substantially the same order in which the corresponding issues were raised in the Office Action. Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the

differences between the claimed invention and the cited references.

Claim 1 is amended with the limitations of claims 2, 4, 8, and 9. In addition, Claim 1 is amended with the limitation of “...monitoring and collecting network traffic in real time *through an adapter not yet enabled to communicate with the network* wherein the network traffic comprises *addresses recently assigned by a DHCP server and addresses and names of SOCKS servers...*” Claim 1 as amended, italics added for emphasis. The amendments are fully supported by the specification. Specifically, the specification discloses monitoring a network to establish a network connection. Page 7, Lines 11-18. In addition, the specification teaches that the network traffic addresses recently assigned by a DHCP server and addresses and names of SOCKS servers. Page 6, Line 23 – Page 7, Line 2.

Claim 1 is also amended with the limitation of assigning a weight to the real time network traffic based on “utilization” instead of “popularity” as in original claim 4. The substitution is fully supported by the specification. Page 7, Lines 2-4.

Claims 2, 4, 8, and 9 are canceled. Claims 5, 10, and 11 are amended to depend from pending claims.

Response to rejections of claims under 35 U.S.C. § 102.

Claims 1 and 3 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Farrow. Claims 1 and 3 also stand rejected under 35 U.S.C. § 102(b) as being anticipated Hibbard. Applicants have amended claim 1 with the limitations of claims 2, 4, 8, and 9. Applicants will therefore traverse the rejection of claim 1 as amended below as though rejected under 35 U.S.C.

§ 103(a) as unpatentable over Hibbard in view of Tang and Miller.

Response to rejections of claims under 35 U.S.C. § 103(a)

Claims 4-6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Hibbard in view of Tang. Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hibbard in view of Pedersen. Claims 8, 9, 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hibbard in view of Miller. Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hibbard and Miller in view of Farrow. Applicant respectfully traverses these rejections.

Claim 1 is amended with the limitations of claims 2, 4, 8, and 9 and so is traversed as being unpatentable under 35 U.S.C. § 103(a) over Hibbard in view of Tang and in view of Miller. As amended, claim 1 includes the limitation "...assigning a weight to the real time network traffic *based on utilization...*" Claim 1 as amended, emphasis added. The Office Action of May 31, 2006 (hereinafter "OA531") cites Tang as teaching assigning weights based on popularity, which is used as equivalent to utilization in the specification of the present invention. OA531, Page 4, Lines 16-17. Applicants respectfully disagree. Instead, Applicants submit that Tang teaches assigning a weight to IP based on IP quality and/or cost. Tang, Page 7, ¶ 81, Lines 7-13. Hibbard and Miller also do not teach assigning a weight based on utilization. Because Tang, Hibbard, and Miller do not teach assigning weights based on utilization, Applicants assert that claim 1 is allowable.

Claim 1 is further amended with the limitation of "...monitoring and collecting network traffic in real time *through an adapter not yet enabled to communicate with the network...*"

Claim 1 as amended, emphasis added. In contrast, Farrow and Hibbard teach monitoring and collecting network traffic through adapters/devices that are enabled to communicate with the network, Farrow, Col. 3, Lines 18-21; Hibbard, Page 3, ¶ 27. Tang and Miller also do not teach monitoring and collecting through adapters that are not yet enabled to communicate with a network. Because neither Farrow, Hibbard, Tang, nor Miller teach the limitation of an adapter not yet enabled to communicate with the network, Applicants assert that claim 1 is allowable.

Applicants have also amended claim 1 with the limitation that the "...network traffic comprises addresses recently assigned by a DHCP server and addresses and names of SOCKS servers..." Claim 1 as amended. Thus the present invention claims monitoring and collecting addresses and names of SOCKS servers. In contrast, neither Farrow, Hibbard, Tang, nor Miller teaches monitoring and collecting addresses and names of SOCKS servers. Farrow teaches providing an IP address from a range of addresses in response to a client request. Farrow, Col. 1, Lines 29-34. Hibbard teaches monitoring the status of a primary connection. Hibbard, Page 2, ¶ 0020, Lines 1-4. Tang discloses clients interfacing with a traffic analysis engine to allow a user to monitor network traffic. Tang, Page 5, ¶ 0060, Lines 3-5. Miller also teaches automated problem diagnosis. Miller, Col. 9, Lines 20-23. However, because Farrow, Hibbard, Tang, and Miller do not teach monitoring and collecting addresses and names of SOCKS servers, Applicants assert that claim 1 is allowable.

Applicants further assert that the combination of Hibbard, Tang, and Miller is inappropriate because the teaching or suggestion to combine the monitoring and connecting functions of Hibbard with the VOIP destination gateway selection functions of Tang and the

computer system problem detection, diagnosis, and resolution teachings of Miller can only be found in the Applicant's disclosure. Hibbard discloses monitoring a primary connection between a client and a virtual private network. Hibbard, Page 1, ¶ 10, Lines 1-3. If the primary connection goes down, Hibbard makes a secondary connection through a public network such as through a dialup connection. Hibbard, Page 1, ¶ 10, Lines 3-6. Tang teaches routing VOIP calls to destination gateways. Tang, Abstract. Miller teaches detecting, making a diagnosis, and resolving computer system problems. Miller, Abstract. Hibbard, Tang, and Miller are only related by the claims of the present invention.

It is "impermissible to use the claims as a frame and the prior art references as a mosaic to piece together a facsimile of the claimed invention." *Uniroyal v. Rudkin-Wiley*, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988) (citing *W. L. Gore & Associates v. Garlock, Inc.*, 220 USPQ 303, 312). Applicants therefore submit that claim 1 cannot be unpatentable over Hibbard in view of Tang and Miller, and is allowable.

Applicants further submit that Hibbard, Tang, and Miller represent different fields of endeavor from the present invention. While the present invention is directed to establishing a network connection, Hibbard is directed to establishing a new connection when a primary connection fails, Tang is directed to routing VOIP traffic over existing network connections, and Miller is directed to resolving problems for a computer system. Hibbard, Page 1, ¶ 10, Lines 1-6; Tang, Abstract; Miller, Abstract. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned."

In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). Applicants therefore submit that claim 1 cannot be unpatentable over Hibbard in view of Tang and Miller, and is allowable.

Response to rejection for nonstatutory obviousness-type double patenting.

Claims 1-11 are provisionally rejected for nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application Number 10/733,055. Applicants have included herewith a terminal disclaimer in response to the obvious-type double patenting rejection of claims 1-11.

As a result of the presented remarks, Applicants assert that independent claim 1 is in condition for prompt allowance. Claims 2, 4, 8, and 9 are canceled. Applicants have not specifically traversed the rejections of dependent claims 3,5-7, 10, and 11 under 35 U.S.C. § 102(b) and § 103(a), but believe those claims to be allowable for depending from allowable claims. See, *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Should additional information be required regarding the traversal of the rejections of the claims enumerated above, the Examiner is respectfully asked to notify Applicants of such need. If any impediments to the prompt allowance of the claims can be resolved by a telephone conversation, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

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